

Appl. No. 09/930,668  
Amdt. Dated January 11, 2007  
PTO Office Action of July 11, 2006

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**REMARKS**

In response to the Office Action of July 11, 2006 Applicant submits the present Amendment. In the Amendment Applicant has amended claims 1, 13, and 22. Applicant has also amended the Abstract to make it shorter as required by the PTO. In view of the Amendments, Applicant believes that the application is now a condition for allowance.

Claims 1-6, 9-13 and 17-21 were rejected under 35 U.S.C. §102(b) as being anticipated by "Indicare-on-Line Patient Assistance Program Website User's Manual" (hereinafter "Indicare"). The Indicare Manual describes Indicare as being a "claim production process" (Indicare page 3) for "hospital inpatient and outpatient pharmacies" (Indicare page 3) to claim replacement pharmaceutical product produced by a list of pharmaceutical manufacturers. (Indicare page 5) "[T]he pharmacy can expect to recover approximately 30% -40% of products given away." (Indicare page 3) The pharmacy gives away drugs and then makes a claim using Indicare for replacement product. Indicare does not screen the patient; it produces claims for a specific drug to a specific manufacturer.

Applicant traverses the rejection under §102 because Indicare fails to disclose each of the elements of claims 1 or 13, or any of their dependent claims. Claim 1 of the present invention requires receiving a referral from a medical facility for a patient and obtaining initial patient information. Based on the initial patient information, making an initial determination as to whether it is likely that benefits can be obtained for the patient under the assistance program. If the initial determination is that it is unlikely that benefits can be obtained then rejecting the referral. Based on additional patient information, making a second determination as to whether it

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is likely that benefits can be obtained for the patient under the assistance program. Indicare fails to disclose each of these steps.

For example, Indicare fails to disclose providing an initial determination and a second determination. Further, Indicare fails to disclose rejecting a referral if the initial determination is that it is unlikely that benefits can be obtained.

The PTO stated that page 12, step 7 of Indicare disclosed, "making an initial determination as to whether it is likely that benefits can be obtained." Applicant disagrees with the PTO's characterization of step 7 of Indicare. Indicare step 7 states, "when you have completed the data entry in all the required fields, click on the button 'Produce Claim Form' at the bottom of the page (you will probably need to scroll down to see it). If all the information has been entered properly the user will receive a message saying . . . .

Claim produced for \_\_\_\_\_

Successfully saved in the Indicare database"

Applicant believes that step 7 at page 12 of Indicare fails to disclose an initial determination or initial analysis step being conducted by Indicare. Step 7 merely describes the claim being "successfully saved." However, there is no disclosure in Indicare with respect to making an initial determination or actually analyzing the information submitted from the claim form.

The PTO stated that page 17 of Indicare disclosed "whether pharmaceutical company is likely to decline/require additional information" if the initial determination is that benefits are likely to be obtained. Applicant disagrees with the PTO's characterization of the disclosure of page 17 of Indicare. Indicare page 17 states, "these programs have detailed questions, and

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patient must be present while Indicare is accessed for the claim. The JBI questionnaire will not be sufficient: [list of pharmaceutical companies omitted]. Programs where the English or Spanish questionnaire (on previous two pages) will be sufficient in most cases: [list of pharmaceutical companies omitted]. Programs where this questionnaire may be sufficient if the patient has no assets (all asset questions should therefore be answered \$0), only one main source of income, and uncomplicated insurance information: [list of pharmaceutical companies omitted]."

Indicare page 17 fails to disclose the step of making an initial determination that benefits are likely to be obtained, then obtaining additional patient information. There is no disclosure on Indicare page 17 that the pharmaceutical company will decline or require additional information. The only inference that can be made by the statements on page 17 is that if the amount of information provided by the patient is not sufficient, additional information beyond the JBI questionnaire may be required. There is no disclosure that the submission will be approved or rejected by the pharmaceutical companies. There is only an inference that once the information is submitted, the pharmacy will be approved for the receipt of replacement drugs.. There is no disclosure or suggestion that the pharmaceutical companies will conduct an analysis of the information submitted in order to determine if benefits are available.

Further the PTO stated that at pages 14-15 and 17, Indicare disclosed, "providing a second indication that benefits are likely in submitting the application to the assistance program...i.e. acceptance or denial of claim." Applicant disagrees with the PTO's characterization of the disclosure of pages 14-15 and 17 of Indicare. Indicare page 14, item 4 states:

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4. Programs that require patients to supply additional information or forms (i.e. tax forms, pay stubs, insurance denial letter, etc.) we recommend that the pharmacy give the patient a three day supply of the free drug, and fill the rest of the prescription when the patient returns with the necessary documents.

5. Submit completed claims to companies for drug replacement."

There is no disclosure on Indicare page 14 that an acceptance or denial of a claim will be made based on the submission of the claim. Nor is there a disclosure regarding the step of making a second determination as to whether benefits are likely. Page 14 of Indicare focuses on how a pharmacy may handle a claim with the Indicare system after a patient has left the pharmacy. Points 4 and 5 of page 14 merely describe the supplying of additional information and submitting the information to the pharmaceutical companies. There is no disclosure that the pharmaceutical companies will analyze the information and provide an acceptance or denial of a claim.

Likewise, page 15 of Indicare also fails to disclose the step of providing of a second indication that benefits are likely and/or acceptance or denial of a claim. Indicare page 15 is a 25 point questionnaire and has no description of how such a questionnaire will be handled by a pharmaceutical company. As discussed above, the description on page 17 of Indicare also fails to disclose an acceptance or denial of a claim. Thus, the rejection under section 102 by Indicare is improper as it fails to disclose each of the elements of claim 1 of the present application. Claims 2-6 and 9-12 depend from claim 1 and include the limitations thereof and are also patentable over Indicare.

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Independent claim 13 requires the step of determining whether to accept the patient referral by comparing the initial patient information to a well established criteria associated with a Medicaid assistance program. Claim 13 also requires comparing the initial payment information and additional payment information to eligibility requirements for the Medicaid assistance program and providing an application for the Medicaid assistance program when it is determined that benefits are likely for the Medicaid assistance program. As Indicare fails to disclose analysis with respect to a Medicaid assistance program it cannot anticipate Applicant's invention. Indicare is focused solely on a system for providing pharmaceutical benefits for indigent people. There is no teaching or suggestion in Indicare that it can provide benefits or make a determination under the eligibility requirements for Medicaid. Thus, the rejection under 35 U.S.C. § 102 of claim 13 over Indicare is improper and Applicant respectfully requests that it be withdrawn. Claims 17-21 depend from claim 13 and include all the limitations thereof and are also allowable over Indicare.

Claims 7-8, 14-16 and 22-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Indicare in view of DeTore, *et al.*, Patent No. 4,975,840 ("DeTore"). Applicant traverses this rejection as well because Applicant's invention is not taught or suggested by Indicare nor DeTore.

Claims 7-8 depend from claim 1 and include all the limitations thereof. As discussed above, claim 1 requires the step of receiving a referral from a medical facility for a patient and obtaining initial patient information. Claim 1 also states that if the initial determination is that it is unlikely that benefits can be obtained then rejecting the referral. Claim 1 also requires the step of making a second determination as to whether it is likely that benefits can be obtained for

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the patient under the assistance program, based on additional patient information. Both Indicare and DeTore failed to teach or suggest each of these steps.

Indicare does not provide a suggestion to one of ordinary skill in the art the claimed steps. Further, DeTore fails to teach or suggest each of these steps. DeTore is focused on a system for determining insurable risk. And in particular risks inherent in underwriting life insurance. DeTore fails to teach or suggest receiving a referral from a medical facility for a patient and obtaining initial patient information. Further, DeTore fails to teach or suggest that if the initial determination is unlikely that benefits can be obtained then rejecting a referral. Thus, the combination of Indicare and DeTore fails to teach or suggest each of the steps of claim 1. Thus, it would not have been obvious to arrive at Applicant's invention of claim 1 and 7 or 8 in over Indicare in view of DeTore.

Claims 14-16 depend from claim 13 and include all the limitations thereof and are also allowable over Indicare in view of DeTore. As discussed above, Indicare fails to teach or suggest analysis with regard to a Medicaid assistance program. DeTore also fails to disclose obtaining information with respect to a Medicaid assistance program or providing eligibility requirements for a Medicaid assistance program. DeTore is focused on life insurance risk analysis and has nothing whatsoever to do with obtaining a patient referral for Medicaid. One of ordinary skill in the art would not have arrived at Applicant's invention of claim 13 over Indicare in view of DeTore. Thus, claims 13 and 14-16 are allowable over Indicare in view of DeTore.

Claims 23-28 depend from claim 22. Claim 22 requires comparing initial patient information to a well defined criteria corresponding to a first assistance program. Then comparing the patient information to a probability model corresponding to a second assistance

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program. Then making a subsequent determination as to whether it is likely that benefits can be obtained for the patient by comparing the initial patient information and the additional patient information to the first and second assistance program that is identified. Both Indicare and DeTore failed to teach or suggest each of these steps.

Indicare is only concerned with respect to obtaining replacement drugs for the pharmacy thereby allowing the pharmacy to give away drugs to patients.. There is no second assistance program described in Indicare for which benefits are being requested. Thus, while Indicare may disclose identification of a first assistance program, it does not disclose a second assistance program, nor comparing initial patient information to a probability model corresponding to a second assistance program. Finally, Indicare fails to teach or suggest the step of making a subsequent determination as to whether it is likely that benefits can be obtained for the patient by comparing the initial patient information and additional patient information to the first and second assistance program that is identified.

As well, DeTore fails to teach or suggest obtaining information and seeking benefits with respect to a first and second assistance program. As discussed above, DeTore is a system for evaluating potential risks with respect to life insurance. Other than life insurance, there is no other "assistance program" described in DeTore. Furthermore, there is no medical "assistance program" at all described by DeTore. Thus, one of ordinary skill in the art would not have arrived at applicant's invention of claim 22 over Indicare in view of DeTore. Thus, the rejection under 35 U.S.C. §103 of claims 7-8, 14-16, and 22-28 is improper and Applicant respectfully requests that it be withdrawn.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

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Respectfully submitted,

By 

David L. Newman (Reg. No. 37,196)

Attorneys for Assignee

Seyfarth Shaw  
131 South Dearborn Street  
Suite 2400  
Chicago, Illinois 60603-5803  
312-460-5000